

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1042 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

YOGENDRA N PATEL

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Appearance:

MR MI HAVA for Petitioner

MR NITIN M AMIN for Respondent No. 1, 2, 3, 4, 5, 6

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CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 18/02/2000

#### ORAL JUDGEMENT

This petition is filed by the State of Gujarat against respondents for an appropriate, writ, order or direction quashing and setting aside the order passed by the Gujarat Revenue Tribunal, dated December 29, 1965 in Revision Application No.656 of 1984. The respondents have purchased land bearing Survey No. 30/2, admeasuring Hecter -0, Are 50.59 by registered sale deed for Rs.15,000/- and entry to that effect was made on October 18, 1982. The Mamlatdar & Agricultural Lands Tribunal,

Gandhinagar in Ganot Case No.2900 of 1982 held that the sale was hit by Sec.63 of the Bombay Tenancy & Agricultural Lands Act, 1918 (hereinafter referred to as the "Act") as the society was not registered and it was merely a proposed society. No sale, therefore, could have been made in favour of such society. The said order came to be confirmed by the Deputy Collector, but the revision application was allowed by the Gujarat Revenue Tribunal, inter alia, observing that though society was not registered, and it was proposed society but sale was not in favour of defendants and no technical view ought to have been taken by the authorities. Against that order, the present petition was filed.

2. I have heard Mr. Poojari, AGP. Mr.Amin for the respondents is not present. Mr. Poojari submitted that the Tribunal has committed error of jurisdiction in allowing the revision application. He submitted that the society was not in existence and hence two authorities below were right in holding that no sale could have been effected in favour of proposed society. He also drew my attention to the provisions of Sec.63 read with Sec.84C of the Act and submitted that the action was in violation of provisions of law and no such sale could be regularized.

3. He also stated that the land was also acquired for Capital Project of Gandhinagar under the provisions of Land Acquisition Act, 1984, and an award was also passed for compensation on September 22, 1986. Actual and physical possession was also taken over on November 12, 1986. In any case, therefore, there is no question of giving effect to the so called registered sale deed.

4. In the facts and on the circumstances of the case, in my opinion, the petition deserves to be allowed. So far as sale is concerned, both the authorities below i.e. Mamlatdar & Agricultural Lands Tribunal and Deputy Collector, were right in holding that when the society was not in existence at the relevant time, no sale could have been made in favour of such proposed society. Looking to the legislative intent, also it is clear that the intention of the legislature was not to allow such sale which was reflected by a subsequent amendment in the Act in deleting Sec.64-A which was inserted by Bombay Act 12 of 1951.

5. Sec. 64-A as inserted by Bombay Act 12 of 1951 read as follows :-

Sec.64-A (Bombay Tenancy & Agricultural Lands Act):

" Exemption to Sales by or in favour of Co-operative Societies"-

Nothing in Section 63 or 64 shall apply to sales effected by or in favour of a Co-operative Society under the Bombay Co-operative Societies Act, 1925".

The said Section is now deleted by Gujarat Act 21 of 1987 which came into force on April 20, 1987.

6. The learned Government Pleader is right in submitting that if such sale is permitted, object underlying the Act would be frustrated.

7. Alternative argument is also well-founded that when the land was acquired under the provisions of the Land Acquisition Act, and award was made and possession was taken over, no useful purpose will be served by keeping the matter pending, as no effective relief can be granted in favour of respondents.

5. For the foregoing reason, the petition deserves to be allowed and is accordingly allowed. The order (Annexure : C) passed by the Gujarat Revenue Tribunal in Revision Application No. TEN/BA/656/84, dated December 20, 1965 is set aside and the order (Annexure A) passed by the Mamlatdar & Agricultural Lands Tribunal, Gandhinagar in Tenancy Case No.2900/82 dated April 4, 1983 and confirmed by the Deputy Collector, Gandhinagar, in Ganot Case No.226/83 dated February 22, 1984 (Annexure:B) are hereby restored. Rule is made absolute, with no order as to costs.

Date: 18/2/2000. -----

ccshah